

No. 82-2140

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IN THE SUPREME COURT OF THE UNITED STATES

ALEXANDER L. STEVENS
CLERK

OCTOBER TERM, 1983

WILBUR HOBBY,

PETITIONER,

v.

UNITED STATES,

RESPONDENT

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 28, 1983
CERTIORARI GRANTED DECEMBER 12, 1983

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WILBUR HOBBY,

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v.

United States of America,

Respondent,

On Writ of Certiorari
 To The United States Court of Appeals
 For The Fourth Circuit

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RELEVANT DOCKET ENTRIES

February 10, 1981. Indictment filed.

April 3, 1981. Motion of Defendant Hobby to Dismiss Indictment Due to Improper Selection of Grand Juries.

June 19, 1981. Superceding Indictment filed.

July 10, 1981. Order denying motion to dismiss.

July 1, 1981. Hearings on Motion to Dismiss.

July 10, 1981. Order denying motion to dismiss.

December 7-18, 1981. Trial Before the Honorable W. Earl Britt

December 19, 1981. Jury Verdict of Guilty.

December 29, 1981. Sentence of the Court.

December 29, 1981. Motion for Arrest Of Judgment.

February 11, 1982. Order Denying the Motion for Arrest of Judgment

February 12, 1982. Notice of Appeal Filed

March 9, 1983. Judgment and opinion of Fourth Circuit entered.

April 29, 1983. Petition for rehearing and suggestion for rehearing en banc denied

June 28, 1983. Petition for Writ of Certiorari Filed

December 12, 1983. Order of Supreme Court granting certiorari.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 81-5-CR-5

No. 81-6-CR-5

UNITED STATES	:	RESPONSE TO
		DEFENDANT HOBBY'S
OF AMERICA	:	MOTION TO DISMISS
		THE INDICTMENT
- vs -	:	DUE TO IMPROPER
		SELECTION OF
WILBUR HOBBY	:	<u>GRAND JURORS</u>

Now comes the United States by and through the United States Attorney for the Eastern District of North Carolina and responds to the defendant's Motion to Dismiss the Indictment Due to Improper Selection of Grand Jurors filed herein as follows:

The Government denies all allegations made by the defendant in his Motion with regard to the jury selection process in the United States District Court for the Eastern District of North Carolina.

Title 28, United States Code, Section

1863, provides that each United States District Court shall devise and place into operation a written plan for the random selection of grand and petit jurors. In July, 1968, the Honorable John D. Larkins, Jr., United States District Judge, submitted a plan for the random selection of jurors, which plan was approved by the Judicial Council and placed into effect. In addition, the Judicial Council approved amendments to the plan for the random selection of jurors and said amendments were placed into effect.

Section 2 of the plan calls for the selection of jurors to be made publicly at random from the list of all persons actually voting in the last general election held in the political subdivisions of the counties within the respective divisions. This is in accord with Title 28, United States Code, Section 1863(b)(2), which provides as follows:

Among other things, such plan shall -- specify whether the names of prospective jurors shall be selected from the voter registration list or the list of actual voters of the political subdivisions within the district or division.

Moreover, the case law has consistently held that the exclusion of non-voters from juries does not impair the cross-sectional aspect of such juries. United States v. Gast, 457 F.2d 141, 142 (7th Cir. 1972), cert. denied, 406 U.S. 969; United States v. Butera, 420 F.2d 564, 573 (1st Cir. 1970); Camp v. United States, 413 F.2d 419, 421 (5th Cir. 1969); United States v. Guzman, 337 F.Supp. 140, 144-145 (D.C. N.Y. 1972), affirmed 468 F.2d 1245 (2d Cir. 1972), cert. denied, 410 U.S. 937 (1973).

Various courts have rejected the argument that approximately proportional representation of the various identifiable groups in the community is required. If

it can be obtained by random selection, proportional representation may be the ideal, because it is the ultimate opposite to intentional exclusion, but it can be achieved only rarely, and then only in regard to some but not all, of relevant criteria. Substantial representation is all that is required. United States v. McVean, 436 F.2d 1120, 1122 (5th Cir. 1971); United States v. Butera, 420 F.2d 564 (1st Cir. 1970); United States v. Di Tomaso, 405 F.2d 385, 390 (4th Cir. 1968). As the Butera court stated:

The Supreme Court has consistently required that jury selection systems draw their jurors from a fair cross-section of the community. It has been suggested that such non-discriminatory jury selection is an essential aspect of our democratic form of government. However, the Court has long recognized that fair and reasonable qualifications for jury service eligibility can be imposed even though they detract from a cross section in the actual jury pools. Moreover, the Court has recognized

that it is neither possible nor necessary -- in order to insure an impartial jury -- that there be a fair cross section of the community on each individual grand and petit jury. 420 F.2d at 567. (footnotes omitted).

While the cross-section concept is firmly embedded in the law, the Constitution does not entitle a defendant to a venire that perfectly mirrors the community or accurately reflects the proportionate strength of every identifiable group. Swain v. Alabama, 380 U.S. 202, 205-209 (1965); Grech v. Wainwright, 492 F.2d 747, 749 (5th Cir. 1974); Thompson v. Sheppard, 490 F.2d 830, 833 (5th Cir. 1974); United States v. Greene, 489 F.2d 1145, 1149 (D.C. Cir. 1973); United States v. Alba-Conrado, 481 F.2d 1266, 1270 (5th Cir. 1973); United States v. Fernandez, 480 F.2d 726, 733 (2nd Cir. 1973); United States v. Canty, 422 F.2d 358 (4th Cir. 1970); United States v. Troplano. 418 F.2d 1069 (2d

Cir. (1969), cert. denied, 397 U.S. 1021.

The claimant pressing a Constitutional challenge bears the burden of setting forth specific facts showing a systematic exclusion of a cognizable class of qualified citizens. The claimant has the burden of showing, prima facie, discriminatory selection practices. The claimant must show that the selection method resulted in the discrimination against distinct groups in the general population. 420 F.2d 564. Purposeful discrimination in jury selection may not be assumed or merely asserted; it must be proven. Mobley v. United States, 379 F.2d 768 (5th Cir. 1967).

The Government submits that the plan adopted by the United States District Court for the Eastern District of North Carolina is in full conformity with the requirements of law in using the actual voter lists as prescribed in Title 28,

United States Code, Section 1863, and no other source names was necessary to foster the policy and protect the right secured by any section of the Jury Reform Act.

United States v. James Earl Grant, Jr., 471 F.2d 648 (4th Cir. 1973) (per curiam); United States v. Grant, 475 F.2d 581 (4th Cir. 1973).

The defendant's motion makes broad allegations and contends absolutely no evidence to substantiate those allegations. Since defendant's burden of proof has not been met, defendant's Motion to Dismiss the Indictment Due to Improper Selection of Grand Jurors is completely without merit and should be denied.

Respectfully submitted, this is the 4th day of May, 1981.

JAMES L. BLACKBURN
United States Attorney

BY: SUZANNE L. JOWDY
Assistant United States Attorney
Criminal Section

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA
RALEIGH DIVISION

No. 81-5-01-CR-5

No. 81-5-02-CR-5

UNITED STATES OF	:	
	:	
v.	:	<u>INDICTMENT</u>
	:	
WILBUR HOBBY	:	
MORT LEVI	:	

The Grand Jury charges:

FIRST COUNT

That from on or about the 23rd day of January, 1979 and continuously thereafter up to and including on or about the 11th of January, 1980, in the Eastern District of North Carolina, WILBUR HOBBY and MORT LEVI willfully and knowingly did combine, conspire, confederate and agree with each other to defraud the United States of funds and monies with respect to the United States Department of Labor Grant Number 37-9-0500-10 from the Division of

18,
U.S.C.,
Sec.
371

Community Employment, North Carolina Department of Natural Resources and Community Development, payable to Precision Graphics, Inc., contrary to and in violation of the provisions of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the object thereof, the defendants performed the following overt acts:

1. On or about the 29th day of January, 1979, MORT LEVI, naming himself as a registered agent, filed or caused to be filed with the North Carolina Secretary of State, Articles of Incorporation of Precision Data Institute, Inc., which document stated in part that the purpose of the corporation was "to engage in the business of data processing, storing, retrieving, compiling and computing data, selling, distributing and organizing various data and training persons to

quickly attain proficiency in operating data system equipment."

2. On or about the 8th day of February, 1979, MORT LEVI, representing Precision Data Institute, Inc., prepared and submitted or caused to be submitted a Grant Request for Training Data Processing Personnel to the "North Carolina Department of Economic and Natural Resources."

3. On or about the 10th day of April, 1979, WILBUR HOBBY, Treasurer of Precision Data Institute, Inc., and owner of approximately 95% of its stock, signed an agreement with Mohawk Data Sciences for the purchase of the following Mohawk Data Sciences equipment: one (1) #21/40 Application Processing System, including (1) Controller Console (M.2102), (1) Operator Station (M.2192), (1) Diskette Drive (F.2171), (1) Dual Station Controller (F.191); one (1) #F164 16K

Additional Memory; one (1) #F191 Dual Station Controller; three (3) #2171 Diskette Drives; three (3) #2192 Operator Stations; one (1) #2174/704 10 MB Disk Drive (External); one (1) #2142-1 Line Printer, 96 Character Set 132 Print Positions; and four (4) #F101 Operator Station Tables.

The total purchase price was \$36,572.00 and was paid in twenty-four (24) equal monthly installments of \$1,721.57 for a total purchase price of \$41,317.68. The buyer of the above-named equipment was listed as Precision Data Institute, Inc.

4. On or about the 10th day of April, 1979, WILBUR HOBBY, Treasurer of Precision Data Institute, Inc., and owner of approximately 95% of its stock, signed a "Maintenance Service Agreement for Customer-Owned MDS Equipment" with Mohawk Data Services for the equipment referred

to in Paragraph 3 for a total monthly maintenance charge of \$214.00. The buyer of this service agreement was listed as Precision Data Institute, Inc.

5. On or about the 26th day of April, 1979, WILBUR HOBBY opened a checking account in the name of Precision Data Institute, Inc. with North Carolina National Bank at Raleigh, North Carolina designating himself as Treasurer of Precision Data Institute, Inc. and the only authorized individual to sign on that account.

6. Between on or about the 1st day of May, 1979 and on or about the 28th day of August, 1979, MORT LEVI sought to recruit necessary students for classes in keypunch operator training. On various occasions, MORT LEVI advised certain prospective students to use false residential addresses if necessary to meet eligibility requirements and also advised certain

prospective students not to give the necessary previous unemployment information on the application forms if by so doing the prospective students would fail to meet certain eligibility requirements.

7. On or about the 10th day of May, 1979, MORT LEVI, as Program Director for Precision Graphics, Inc., wrote or caused to be written, a memorandum to the Property Officer for the Division of Community Employment of the North Carolina Department of Natural Resources and Community Development stating that Precision Graphics, Inc. was "without any equipment" and wanted authorization for purchase and leasing of equipment.

8. On or about the 21st day of May, 1979, WILBUR HOBBY wrote a check on the checking account of Precision Data Institute, Inc., referred to in Paragraph 5, in the amount of \$3,000.00 to James

Earl Trammell for a 1974 Mercury - 4266A523984. At this time, sufficient funds in the checking account did not exist to cover this check, and for the statement period ending May 31, 1979 a balance of minus \$29.85 existed.

9. On or about the 21st day of May, 1979, WILBUR HOBBY, as President of Precision Graphics, Inc., signed a contract with the Division of Community Employment, North Carolina Department of Natural Resources and Community Development, in the amount of \$129,429.00 for a contract period to begin on May 21, 1979 and to end by September 30, 1979, such contract to be financed under the Comprehensive Employment and Training Act of 1973. A representative of the North Carolina Department of Natural Resources and Community Development signed the contract on or about May 24, 1979.

10. On or about the 21st day of May, 1979, WILBUR HOBBY, representing Precision Graphics, Inc., and James E. Trammell, representing Precision Data Institute, Inc., signed an agreement whereby Precision Data Institute, Inc. agreed "to rent to Precision Graphics, Inc., for its program to train Data Entry Operators" the computer equipment referred to in Paragraph 3, "at the rate of \$12.50 per hour with the agreed on schedule of five (5) days per week for two (2) separate classes of six (6) hours per day for each class." Such payment was subsequently made by Precision Graphics, Inc. to Precision Data Institute, Inc.

11. On or about the 21st day of May, 1979, WILBUR HOBBY, representing Precision Graphics, Inc., and James E. Trammell, representing Precision Data Institute, Inc., signed an agreement whereby Precision Data Institute, Inc. agreed to

furnish maintenance on the computer equipment referred to in Paragraph 3 for the sum of \$125.00 per week. Such payment was subsequently made by Precision Graphics, Inc. to Precision Data Institute, Inc.

12. On or about the 23rd day of May, 1979, MORT LEVI, representing Precision Graphics, Inc., requested or caused to be requested from the Division of Community Employment an advance of funds in the amount of \$43,696.00, such advance being approved on May 25, 1979.

13. On or about the 29th day of May, 1979, WILBUR HOBBY wrote a check to Mohawk Data Science, Inc. in the amount of \$10,329.42 on the Precision Data Institute, Inc. checking account referred to in Paragraph 5. The check was listed as payment for the "21/40" Series," the computer equipment referred to in Paragraph 3. On or about the 29th day of

May, 1979, sufficient funds to cover this check did not exist in the Precision Data Institute, Inc. checking account, and the ending balance as of May 31, 1979 was minus \$29.85.

14. Between on or about the 21st day of May, 1979 and on or about the 10th day of October, 1979, WILBUR HOBBY charged and was reimbursed approximately \$3,000.00 for the rental of certain computer equipment, referred to in Paragraph 3, for the period of on or about May 21, 1979 through on or about June 15, 1979, when in fact such computer equipment was not functionally operational at Precision Graphics, Inc. until on or about June 15, 1979.

15. Between on or about the 30th day of May, 1979 and the 4th day of June, 1979, WILBUR HOBBY deposited the \$43,696.00 check advance from the North Carolina Department of Natural Resources

and Community Development into the Precision Graphics, Inc. checking account at Mechanics and Farmers Bank and subsequently withdrew approximately \$18,000.00 from that checking account at North Carolina National Bank, the account referred to in Paragraph 5. The checks referred to in Paragraphs 8 and 13 were subsequently deposited and paid out of the Precision Data Institute, Inc. checking account referred to above.

16. Between on or about the 29th day of June, 1979 and the 11th day of January, 1980, WILBUR HOBBY transferred out of the Precision Graphics, Inc. checking account at Mechanics and Farmers Bank approximately \$432,000.00 and deposited that same amount into the Precision Data Institute, Inc. checking account at North Carolina National Bank, the account referred to in Paragraph 5, Precision Graphics, Inc. having received another

cash advance of approximately \$50,857.00 on or about July 30, 1979 from the North Carolina Department of Natural Resources and Community Development, such cash advance having been requested or caused to be requested by MORT LEVI.

17. Between on or about the 4th day of June, 1979 and on or about the 11th day of January, 1980, WILBUR HOBBY made or caused to be made loans of money and payments and purchases on or of various items by Precision Data Institute, Inc. in the amount of approximately \$29,000.00.

Said acts and other overt acts not now known to the Grand Jury being committed in the furtherance of said conspiracy to violate the provisions of Title 18, United States, Code, Section 371.

SECOND COUNT

That between on or about the 1st day of May, 1979 and on or about the 28th day of August, 1979, MORT LEVI, Program Director

of Precision Graphics, Inc., an agency receiving financial assistance under the Comprehensive Employment and Training Act, did knowingly hire ineligible individuals for training in a program established under the United States Department of Labor Grant Number 37-9-0500-10 from the North Carolina Department of Natural Resources and Community Development to Precision Graphics, Inc., a grant or contract of assistance pursuant to the Comprehensive Employment and Training Act, in violation of the provisions of Title 18, United States Code, Section 665.

THIRD COUNT

That between on or about the 21st day of May, 1979 and on or about the 10th day of October, 1979, WILBUR HOBBY, President of Precision Graphics, Inc., an agency receiving financial assistance under the Comprehensive Employment and Training Act, did willfully misapply and did obtain by

fraud approximately \$1,840.00 relating to computer maintenance of the monies and funds which were the subject of United States Department of Labor Grant Number 37-9-0500-10 from the North Carolina Department of Natural Resources and Community Development to Precision Graphics, Inc., a grant or contract of assistance pursuant to the Comprehensive Employment and Training Act, in violation of the provisions of Title 18, United States Code, Section 665.

FOURTH COUNT

18,
U.S.C.,
Sec.
665

That between on or about the 29th of May, 1979 and on or about the 10th of May, 1980, WILBUR HOBBY, President of Precision Graphics, Inc., an agency receiving financial assistance under the Comprehensive Employment and Training Act, did willfully misapply and obtain by fraud approximately \$25,000.00 of the monies and funds which were the subject of United

States Department of Labor Grant Number 37-9-0500-10 from the North Carolina Department of Natural Resources and Community Development to Precision Graphics, Inc., a grant or contract of assistance pursuant to the Comprehensive Employment and Training Act, by purchasing from and making payments to Mohawk Data Sciences, in the name of Precision Data Institute, Inc., the following Mohawk Data Sciences equipment: one (1) #21/40 Application Processing System, including (1) Controller Console (M.2102), and (1) Operator Station (M.2192), (1) Diskette Drive (F.2171), (1) Dual Station Controller (F.191); one (1) #F164 16K Additional Memory; one (1) #F191 Dual Station Controller; three (3) #2171 Diskette Drives; three (3) #2192 Operator Stations; one (1) #2174/704 10 MB Disk Drive (External); one (1) #2142-1 Line Printer, 96 Character Set 132 Print

Positions; and four (4) #F101 Operator Station Tables, in violation of the provisions of Title 18, United States Code, Section 665.

FIFTH COUNT

That between on or about the 29th day of May, 1979 and on or about the 10th day of May, 1980, WILBUR HOBBY, President of Precision Graphics, Inc., an agency receiving financial assistance under the Comprehensive Employment and Training Act, did willfully misapply and obtain by fraud approximately \$25,000.00 of the monies and funds which were the subject of United States Department of Labor Grant Number 37-9-0500-10 from the North Carolina Department of Natural Resources and Community Development to Precision Graphics, Inc., a grant or contract of assistance pursuant to the Comprehensive Employment and Training Act, by purchasing from and making payments to Mohawk Data

18,
U.S.C.,
Sec.
665

Sciences, in the name of Precision Data Institute Inc., the following Mohawk Data Sciences equipment: one (1) #21/40 Application Processing System, including (1) Controller Console (M.2102), (1) Operator Station (M.2192), (1) Diskette Drive (F.2171), (1) Dual Station Controller (F.191); one (1) #F164 16K Additional Memory; one (1) #F191 Dual Station Controller; three (3) #2171 Diskette Drives; three (3) #2191 Operator Stations; one (1) #2174/704 10 MB Disk Drive (External); one (1) #2142-1 Line Printer, 96 Character Set 132 Print Positions; and four (4) #F101 Operator Station Tables, in violation of the provisions of Title 18, United States Code, Section 665.

FIFTH COUNT

That between on or about the 21st day of May, 1979 and on or about the 10th day of October, 1979, WILBUR HOBBY,

President of Precision Graphics, Inc., an agency receiving financial assistance under the Comprehensive Employment and Training Act, did willfully misapply and obtain by fraud approximately \$3,000.00 of the monies and funds which were the subject of United States Department of Labor Grant Number 37-9-0500-10 from the North Carolina Department of Natural Resources and Community Development to Precision Graphics, Inc., a grant or contract of assistance pursuant to the Comprehensive Employment and Training Act, by charging for and being reimbursed for rental of certain data processing equipment for the period of on or about May 21, 1979 through on or about June 15, 1979, when such data processing equipment was not in fact functionally operational until on or about June 15, 1979, in violation of the provisions of Title 18, United States Code, Section 665.

A TRUE BILL

FOREMAN

UNITED STATES ATTORNEY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Raleigh Division

UNITED STATES OF	)	NOS. 81-5-CR-5
AMERICA,	)	81-6-CR-5
)	
Plaintiff,	)	DEFENDANT HOBBY'S
	)	<u>MOTION TO DISMISS</u>
vs.	)	<u>THE INDICTMENT DUE</u>
	)	<u>TO IMPROPER SELEC-</u>
WILBUR HOBBY,	)	<u>TION OF GRAND</u>
	)	<u>JURORS</u>
<u>et al.</u> ,)	
	)	(Rule 6, Fed. R.
Defendants	)	Crim. P.)

SIRS:

PLEASE TAKE NOTICE that pursuant to the Fifth and Sixth Amendments to the United States Constitution, 28 U.S.C. § 1867, Rule 6 of the Federal Rules of Criminal Procedure, and the Jury Plan for the Eastern District of North Carolina (hereinafter "Plan"), Defendant HOBBY moves this Court for an Order dismissing both above indictments due to improper selection of grand jurors, to wit:

1. The administration of the Plan has failed to ensure grand juries selected at random from a fair cross-section of the community within the District, in violation of 28 U.S.C. § 1861.

2. The administration of the Plan has failed to ensure that all citizens have the opportunity to serve as jurors when summoned and that they actually serve as jurors when summoned for that purpose, in violation of 28 U.S.C. § 1861.

3. The administration of the Plan excludes citizens from service as grand jurors on account of race, color, economic status and occupation, in violation of 28 U.S.C. § 1862 and the Fifth and Sixth Amendments of the United States Constitution.

4. The administration of the Plan excludes citizens from service as grand jurors on account of age, and otherwise fails adequately to represent a fair

cross-section of the community, in violation of the Fifth and Sixth Amendments of the United States Constitution.

5. The administration of the Plan fails to ensure that all political subdivisions within the District are substantially proportionately represented, in violation of 28 U.S.C. § 1863(b)(3) and the Fifth and Sixth Amendments of the United States Constitution.

6. Lists of actual voters are not adequate as a sole source of names for the master jury wheel to foster the policy and protect the rights secured by the Jury Act, and no supplemental sources were used, in violation of 28 U.S.C. § 1863(b)(2) and the Fifth and Sixth Amendments of the United States Constitution.

Defendant HOBBS files this Motion now prior to receiving access to any records

necessary to fully discern all grounds which might be urged herein, in order to comply with the Order setting April 3, 1981 as the date by which all pretrial motions must be filed. At such time as he receives access to the necessary records, he respectfully reserves his right to amend this Motion, file the required sworn statement pursuant to 28 U.S.C. § 1867 (d), a supporting memorandum of law, and request that a date be set for a hearing.

This the 3rd day of April, 1981.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 81-5-01-CR-5

No. 81-5-02-CR-5

UNITED STATES	:
OF AMERICA	:
	: <u>I N D I C T M E N T</u>
	: (Superseding)
v.	:
	:
WILBUR HOBBY	:
MORT LEVI	:

The Grand Jury charges that:

1. On or about the 28th day of December, 1973, the Congress of the United States of America enacted the Comprehensive Employment and Training Act of 1973 (hereinafter the "Act") to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible and decentralized system of Federal, State and local programs.

2. The Comprehensive Employment and Training Act and subsequent amendments thereto authorized the United States Department of Labor, an agency of the United States, to carry out the provisions of the Act and appropriated such funds as necessary to that purpose.

3. The Act and subsequent amendments thereto authorized the Secretary of Labor to make financial assistance available to a "Prime Sponsor" to enable it to carry out the Act. A "Prime Sponsor" is defined to include "a State," or portion thereof.

4. The State of North Carolina at all times relevant in this Indictment was a "Prime Sponsor" and acted through the Division of Community Employment of the North Carolina Department of Natural Resources and Community Development to receive the allocation of funds from the Secretary of Labor and otherwise administer the Comprehensive Employment

Training programs consistent with the Act.

5. Pursuant to the Act and applicable regulations, an allocation of funds from the Secretary of Labor was made to the State of North Carolina, as a Prime Sponsor, under the United States Department of Labor Grant Number 37-9-0500-10. *

6. The State of North Carolina, acting as a Prime Sponsor, through the Division of Natural Resources and Community Development entered into Contract Number 1950009J02 with Precision Graphics, Inc. to perform certain technical or professional services in connection with a program to be financed by the above United States Department of Labor grant. The contract was subject to the Act and applicable regulations.

7. By the terms of that contract, the State of North Carolina, as a Prime

Sponsor, agreed, subject to availability of federal funds under the above-referenced United States Department of Labor grant, to pay Precision Graphics, Inc., as a Contractor, upon receipt of proper documentation, for allowable costs properly incurred in performing the services provided under the Contract. Other than the reimbursement of these allowable costs, no further compensation or profit was payable to Precision Graphics, Inc., as Contractor.

8. At all times relevant in this Indictment, pursuant to Contract Number 1950009J02, the Act, and applicable regulations, allowable costs were limited to those expenditures necessary and reasonable for the proper and efficient administration of the grant program.

9. At all times relevant in this Indictment, WILBUR HOBBY was the President and Chief Executive of Precision Graphics,

Inc.

10. At all times relevant in this Indictment, WILBUR HOBBY was the Treasurer and owner of 95% of the stock of Precision Data Institute, Inc., and MORT LEVI was the registered agent, an incorporator, and a director of Precision Data Institute, Inc.

11. At all times relevant in this Indictment, and pursuant to Contract Number 1950009J02, the Act, and applicable regulations, all property purchased with funds received pursuant to said contract were to become the property of the State of North Carolina unless the United States Department of Labor elected to retain ownership. Acquisition of any property items having a unit cost of \$1,000.00 or more must have been approved by the United States Department of Labor before it could be approved by the Prime Sponsor.

12. At all times relevant in this

Indictment, and pursuant to Contract Number 1950009J02, the Act, and applicable regulations, Precision Graphics, Inc., as Contractor, was not entitled to funds to cover the costs of any purchased or leased property, other than expendable supplies, unless prior written authorization of the Prime Sponsor for each purchase or lease was obtained.

13. At all times relevant in this Indictment, and pursuant to Contract Number 1950009J02, the Act, and applicable regulations, transfers of materials, supplies, and services between Precision Graphics, Inc. and Precision Data Institute, Inc. were required to be on the basis of cost incurred.

14. The allegations of Paragraphs 1 through 13 above are hereby alleged and incorporated as though set forth in full in Counts 1 through 5.

FIRST COUNT

From on or about the 23rd day of January, 1979 and continuously thereafter up to and including on or about the 11th day of January, 1980, in the Eastern District of North Carolina, WILBUR HOBBY and MORT LEVI willfully and knowingly did combine, conspire, confederate and agree with each other to defraud the United States of funds and monies, in violation of the provisions of Title 18, United States Code, Section 665, said funds and monies being appropriated and allocated to Precision Graphics, Inc., pursuant to United States Department of Labor Grant Number 37-9-0500-10 from the Division of Community Employment, North Carolina Department of Natural Resources and Community Development, in that WILBUR HOBBY and MORT LEVI did use said funds and monies to purchase computer equipment and computer maintenance services on behalf

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of and in the name of Precision Data Institute, Inc., resulting in unlawful profits to Precision Data Institute, Inc., in violation of Contract Number 1950009J02, contrary to and in violation of the provisions of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the object thereof, the defendants performed the following overt acts:

1. On or about the 29th day of January, 1979, MORT LEVI, naming himself as registered agent, filed or caused to be filed with the North Carolina Secretary of State, Articles of Incorporation of Precision Data Institute, Inc., which document stated in part that the purpose of the corporation was "to engage in the business of data processing, storing, retrieving, compiling and computing data,

selling, distributing and organizing various data and training persons to quickly attain proficiency in operating data system equipment."

2. On or about the 8th day of February, 1979, MORT LEVI, representing Precision Data Institute, Inc., prepared and submitted or caused to be submitted a Grant Request for Training Data Processing Personnel to the North Carolina Department of Natural Resources and Community Development, said request having never been funded.

3. Between on or about the 27th day of March, 1979, and on or about the 25th day of April, 1979, WILBUR HOBBY or MORT LEVI, or both, representing Precision Graphics, Inc. prepared and submitted or caused to be submitted a Grant Request for Training Data Processing Personnel to the North Carolina Department of Natural Resources and Community Development.

4. On or about the 21st day of May, 1979, WILBUR HOBBY, as President of Precision Graphics, Inc., signed Contract Number 1950009J02 in the amount of approximately \$129,429.00 for a contract period to begin on May 21, 1979 and to end by September 30, 1979, such contract to be financed under the Comprehensive Employment and Training Act of 1973. A representative of the North Carolina Department of Natural Resources and Community Development signed the contract on or about May 24, 1979.

5. On or about the 10th day of April, 1979, WILBUR HOBBY, Treasurer of Precision Data Institute, Inc., and owner of approximately 95% of its stock, signed, on behalf of and in the name of Precision Data Institute, Inc., an agreement with Mohawk Data Sciences for the purchase of the following Mohawk Data Sciences equipment: one (1) #21/40 Application

Processing System, including one (1)
Controller Console (M.2102), one (1)
Operator Station (M.2192), one (1)
Diskette Drive (F.2171), one (1) Dual
Station Controller (F.191); one (1) #F164
16K Additional Memory: one (1) #F191 Dual
Station Controller; three (3) #2171
Diskette Drives; three (3) #2192 Operator
Stations; one (1) #2174/704 10 MB Disk
Drive (External); one (1) #2142-1 Line
Printer, 96 Character Set 132 Print
Positions; and four (4) #F101 Operator
Station Tables.

The total purchase price was
approximately \$36,572.00 and was to be
paid in twenty-four (24) equal monthly
installments of approximately \$1,721.57
for a total purchase price of
approximately \$41,317.68. The buyer of
the above-named equipment was listed as
Precision Data Institute, Inc.

6. On or about the 10th day of April,

1979, WILBUR HOBBY, Treasurer of Precision Data Institute, Inc., and owner of approximately 95% of this stock, signed a "Maintenance Service Agreement for Customer-Owned MDS Equipment" with Mohawk Data Sciences for the equipment referred to in Overt Act 5 for a total monthly maintenance charge of approximately \$214.00. The buyer of this service agreement was listed as Precision Data Institute, Inc.

7. On or about the 26th day of April, 1979, WILBUR HOBBY opened a checking account in the name of Precision Data Institute, Inc. with North Carolina National Bank at Raleigh, North Carolina designating himself as Treasurer of Precision Data Institute, Inc. and the only authorized individual to sign on that account.

8. Between on or about the 1st day of May, 1979 and on or about the 28th day of

May, 1979, MORT LEVI, on behalf of Precision Graphics, Inc., sought to recruit necessary students for classes in keypunch operator training. On various occasions, MORT LEVI advised certain prospective students to use false residential addresses if necessary to meet eligibility requirements and also advised certain prospective students not to give the necessary previous unemployment information on the application forms if by so doing the prospective students would fail to meet certain eligibility requirements.

9. On or about the 10th day of May, 1979, MORT LEVI, as Program Director for Precision Graphics, Inc., wrote or caused to be written, a memorandum to the Property Officer for the Division of Community Employment of the North Carolina Department of Human Resources and Community Development stating that

Precision Graphics, Inc. was "without any equipment" and wanted authorization for purchase and leasing of equipment.

10. On or about the 21st day of May, 1979, WILBUR HOBBY, representing Precision Graphics, Inc., and James E. Trammell, representing Precision Data Institute, Inc., signed an agreement whereby Precision Data Institute, Inc. agreed "to rent to Precision Graphics, Inc., for its program to train Data Entry Operators" the computer equipment referred to in Overt Act 5, "at the rate of \$12.50 per hour with the agreed on schedule of five (5) days per week for two (2) separate classes of six (6) hours per day for each class." Such payment was subsequently made by Precision Graphics, Inc. to Precision Data Institute, Inc.

11. On or about the 21st day of May, 1979, WILBUR HOBBY, representing Precision Graphics, Inc., and James E. Trammell,

representing Precision Data Institute, Inc., signed an agreement whereby Precision Data Institute, Inc., agreed to furnish maintenance on the computer equipment referred to in Overt Act 5 for the sum of approximately \$125.00 per week. Such payment was subsequently made by Precision Graphics, Inc. to Precision Data Institute, Inc.

12. On or about the 23rd day of May, 1979, MORT LEVI, representing Precision Graphics, Inc., requested or caused to be requested from the Division of Community Employment an advance of funds in the amount of approximately \$43,696.00, such advance being approved on May 25, 1979.

13. On or about the 29th day of May, 1979, WILBUR HOBBY wrote a check to Mohawk Data Sciences, Inc. in the amount of \$10,329.42 on the Precision Data Institute, Inc. checking account referred to in Overt Act 7. The check was listed

as payment for the "21/40 Series," the computer equipment referred to in Overt Act 5.

14. Between on or about the 21st of May, 1979 and on or about the 10th day of October, 1979, WILBUR HOBBY on behalf of and in the name of Precision Data Institute, Inc., charged to Precision Graphics, Inc. and was reimbursed by Precision Graphics, Inc. approximately \$3,000.00 for the rental of certain computer equipment, referred to in Overt Act 5, for the period of on or about May 21, 1979 through on or about June 15, 1979, when in fact such computer equipment was not functionally operational at Precision Graphics, Inc. until on or about June 15, 1979.

15. Between on or about the 30th of May, 1979 and the 4th day of June, 1979, WILBUR HOBBY deposited or caused to be deposited the approximately \$43,696.00

check advance, referred to in Overt Act 12, which was from the North Carolina Department of Natural Resources and Community Development, into the Precision Graphics, Inc. checking account at Mechanics and Farmers Bank and subsequently withdrew approximately \$18,000.00 from that checking account and deposited it into the Precision Data Institute, Inc. checking account at North Carolina National Bank, the account referred to in Overt Act 7. The check referred to in Overt Act 13 was subsequently paid out of the Precision Data Institute, Inc. checking account referred to above.

16. Between on or about the 29th day of June, 1979 and the 11th day of January 1980, WILBUR HOBBY transferred out of the Precision Graphics, Inc. checking account at Mechanics and Farmers Bank approximately \$32,000.00 and deposited

that same amount into the Precision Data Institute, Inc. checking account at North Carolina National Bank, the account referred to in Overt Act 7. Precision Graphics, Inc. having received another cash advance of approximately \$50,857.00 on or about July 30, 1979 from the North Carolina Department of Natural Resources and Community Development, such cash advance having been requested or caused to be requested by MORT LEVI.

Said acts and other overt acts not now known to the Grand Jury being committed in the furtherance of said conspiracy to violate the provisions of Title 18, United States Code, Sections 371 and 665.

SECOND COUNT

That between on or about the 1st day of May, 1979 and on or about the 28th day of August, 1979, in the Eastern District of North Carolina, MORT LEVI, in his capacity as Program Director of Precision

Graphics, Inc., did knowingly hire ineligible individuals for training in a program established under United States Department of Labor Grant Number 37-9-0500-10, Contract Number 1950009J02, in violation of the provisions of Title 18, United States Code, Section 665.

THIRD COUNT

That between on or about the 21st day of May, 1979, in the Eastern District of North Carolina, WILBUR HOBBY, President of Precision Graphics, Inc., did willfully misapply and did obtain by fraud approximately \$1,840.00 relating to computer maintenance, that is, WILBUR HOBBY through Precision Data Institute, Inc. did enter into a contract with Mohawk Data Sciences, whereby Mohawk Data Sciences agreed to provide computer maintenance service for the equipment described in Overt Act 5, Count 1 of this Indictment, at the rate of approximately

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\$214.00 per month and WILBUR HOBBY, representing Precision Graphics, Inc., entered into an agreement with Precision Data Institute, Inc. whereby Precision Data Institute, Inc. agreed to furnish maintenance for the same computer equipment referred to in Overt Act 5, Count 1 of this Indictment, at the rate of approximately \$125.00 per week, resulting in an unlawful profit of approximately \$1,840.00 to WILBUR HOBBY, through Precision Data Institute, Inc., in violation of Contract Number 1950009J02, said monies and funds being the subject of United States Department of Labor Grant Number 37-9-0500-10, in violation of the provisions of Title 18, United States Code, Section 665.

FOURTH COUNT

That between on or about the 29th day of May, 1979 and on or about the 10th day of May, 1980, in the Eastern District of

North Carolina, WILBUR HOBBY, President of Precision Graphics, Inc., did willfully misapply and obtain by fraud monies and funds received under the United States Department of Labor Grant Number 37-9-0500-10, by using said monies and funds to purchase from Mohawk Data Sciences the equipment described in Overt Act 5, Count 1; said equipment being purchased in the name of and on behalf of Precision Data Institute, Inc., and such purchase being in violation of the provisions of North Carolina Department of Natural Resources and Community Development Contract Number 1950009J02, all in violation of the provisions of Title 18, United States Code, Section 665.

FIFTH COUNT

That between on or about the 21st day of May, 1979 and on or about the 10th day of October, 1979, in the Eastern District of North Carolina, WILBUR HOBBY, President

of Precision Graphics, Inc., did willfully misapply and obtain by fraud approximately \$3,000 of the monies and funds received under United States Department of Labor Grant Number 37-9-0500-10, by charging for and being reimbursed for rental of certain data processing equipment for the period of on or about May 21, 1979 through on or about June 15, 1979, when such data processing equipment was not in fact functionally operational until on or about June 15, 1979, in violation of the provisions of Title 18, United States Code, Section 665.

A TRUE BILL

Ayden R. Lee, Jr.
FOREMAN

James Blackburn
UNITED STATES ATTORNEY

JAMES M. O'REILLY
WAS CALLED AS A WITNESS, DULY SWORN, AND
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

By Mr. Beskind:

Q. State your full name for the record, spelling your last name, please.

A. James M. O'Reilly, O--Capital "R" - E-I-L-L-Y.

Q. How old are you sir?

A. 39.

Q. What is your present employment?

A. I'm a statistical social science consultant.

Q. And your offices are where?

A. In Durham.

Q. Would you describe briefly to the court your background, in terms of education and employment before your
170 present position?

A. I have received a bachelors degree in economics from the University of Michigan in 1966; In 1967, I entered the Army; I was discharged from the army in late 1969; I became a newspaper reporter in 1970, worked as a reporter for three years, four years, in New Jersey and North Carolina; I entered graduate school at Duke University, received a masters in sociology and demography; and have completed all the work required for a Ph.D. in sociology that will be awarded in September.

Q. Would you tell us what newspaper you worked for in North Carolina?

A. The Durham Morning Herald.

Q. Have you previously qualified as an expert in statistics and demography in courts--in federal courts?

A. I have.

Q. And where would that be?

A. In the Eastern District of North

Carolina, the Southern District of West Virginia, the Northern District of Georgia, twice in the Southern District of Florida.

The Court: Do you recall when you testified in the Eastern District of North Carolina?

The Witness: I think it would be 1978, sir. It was in the case of USA versus Coates, et al.

By Mr. Beskind:

Q. And have you qualified as an expert
171 in statistics and demography in State Court in North Carolina?

A. I have.

Q. How many times would that be?

A. In excess of a dozen.

Q. Have you published anything in professional journals in the past in this area?

A. I've published two articles, one law review article and one chapter in a

book on discrimination.

Q. Is this a copy of the book in which you have written the chapter?

A. I've published two articles, one Law Review Article and one chapter in a book on discrimination.

Q. Is this a copy of the book in which you have written the chapter?

A. That's correct.

Q. Okay. Have you had special training-- Did you have special training in preparation for conducting Jury analysis?

A. The Graduate, Professional Studies of Demography suit, very nicely fit the problems of Jury representation.

Q. Would you explain what demography is?

A. Demography is the study of population and its components, mortality, fertility, mobility, migration, and the distribution of population and the items

that relate to that.

Q. Did you study statistics, also, in preparation of jury analysis?

A. Yes, I did.

172 Q. And computer analysis?

A. That's correct.

Q. And do you, in fact, own your own computer?

A. I do.

Q. Have you served as consultant to any State agencies in this area?

A. I have.

Q. And what would those agencies be?

A. The Governor's Crime Commission and the State Human Relations Council.

Q. And would you tell us briefly what you did for them?

A. I was approached by these agencies last fall as they became concerned about Jury representation in North Carolina and the possibility of taking steps to ameliorate any problems. They asked me

to consult with them. I did. I made recommendations on a better--a different approach. They accepted it. I drafted a piece of legislation, they accepted it. The Court's Commission accepted it. And essentially, it's just passed the Legislature, the change, the Jury source--the Jury sources in North Carolina, to a system that merges driver's licenses and voter registration roles.

Mr. Beskind: Your Honor, at this time we would offer Mr. O'Reilly as an
173 expert in Statistics and Demography.

The Court: The Court so finds.

By Mr. Beskind:

Q. Would you explain to the court what a jury study such as the one you've done in this case looks at?

A. The essential elements of a Jury study are to determine the make-up of the population, the cross-section, if the issue is whether a Jury is representative

a cross-section. And that's typically done using census information. And the second element is to determine the make-up of the Jury population that you're concerned with. And then the third step is to compare these two.

Q. So, it's fair to say that it's the comparison of the actual population in the community with the Jury Wheel, basically?

A. That's correct.

Q. In 1978, were you asked by the attorneys to study the Master Jury Wheel for the Eastern District of North Carolina?

A. I was.

Q. And is that the same wheel from which the jurors which indicted Mr. Hobby were selected?

A. That's my understanding.

Q. How did you go about doing your actual study?

A. The study was conducted-- data was

gathered from the District Clerk's office, 174 here, in Raleigh by two paralegals from the Atlanta lawyer's office, the Atlanta lawyer being Mr. Rupert Boulton.

And these two women, at my direction, following procedures I outlined for them and wrote down, pulled random samples from the--all the return questionnaires from the 1977 Wheel. They pulled samples in excess of 1100 people of exceptional--an extra large sample, because at that point, one of the issues was representation within divisions of the District, not Districtwide.

With that data, I had that data checked and keypunched. I analyzed the data.

Q. And did you also have data as to the population as to the Eastern District of North Carolina?

Q. And you did that work in 1978, is that correct?

A. That's correct.

Q. And with the 1970 data, is that right?

A. That's correct.

Q. Have you compared that '70' data to the preliminary 1980 data to see if there's any significant difference?

A. In the only way that it's possible. The only 1980 census information that's out so far is just on race of total population by counting the jurisdictions.

I compared that to the-- the calculations I made to estimate the 1976 racial make-up of the adult population of Eastern North Carolina with the information from the 1980 Census. And they are extremely close, within a percentage point.

Q. Would it make any difference in terms of anything you will be asked today?

A. None.

Q. Now, after you entered the data

into the computer, what did you do?

A. I wrote computer programs and prepared statistics and tables to illustrate or display the statistics on the population on the pool or the Master Wheel, and then statistics that expressed the differences between those two.

Q. Earlier this year I asked you to study the demographics of those who had served as grand jurors, here?

A. That's correct.

Q. And how did you do that?

A. I was given data from your office, from Mr. Leonard, with return questionnaires--the return questionnaires, essentially, of all the grand jury forepersons, and deputy forepersons for this jurisdiction since 1974.

Q. Now, was this a sample of those persons?

A. No it was not. It was the entire 176 count of all of the information that was

available for.

Q. For what years, sir?

A. '74' through '81', I think, sir.

Q. And how many foremen and deputy foremen did that cover?

A. Well, there were 15 Grand Juries, so there was 15 of each.

Q. Thank-you. Did you prepare a table that indicated the results of your study?

A. That's correct.

Q. Have you brought them with you?

A. I have.

Q. Do you have a copy?

A. I have.

Mr. Beskind: Your Honor, I would like these exhibits marked for identification.

The Court: Let them be marked.

Mr. Beskind: Your Honor, may I approach the witness?

The Court: Yes, you may.

By Mr. Beskind:

Q. Calling your attention to what has been marked as Defendant Hobby's Exhibit #1, would you tell the Court what it is please?

A. It's a table of statistics and the 177 results of the analysis of a demographic composition of the Master Jury Wheel for this period, 1977 to 1981.

Mr. Beskind: Your Honor, for the record, Exhibit #1 is Table 1, which was attached to the affidavit previously tendered to the Court.

By Mr. Beskind:

Q. Now, reading across the top, if we could look at the terms or the columns and consider just the first category that you've identified, which is race, would you explain what the term "observed" means?

A. Observed is the--refers to the persons in the sample that was pulled from

the Jury Wheel and therefore, the left-hand column under the observed is the number of whites and blacks found in the sample, and then the right-hand column represents the percent.

Q. Now, how many blacks and how many whites were in the sample of the Eastern District Master Grand Jury Wheel?

A. 873 whites, 219 blacks.

Q. And expressed in terms of percentages, what are the percentages of whites and blacks?

A. 80% white, 20% black.

Q. Now, the second column there is headed "expected", would you explain to the court what that means?

A. Expected, the number--the expected number is the number of whites and blacks 178 one would expect to find in a sample of that size if the jury wheel precisely represented the population found in the census. Therefore, it's essentially

taken by multiplying a total of the sample in which the case of whites and blacks is 1,092 times the percent of population, times 70% for whites and 30% for blacks. And so, we would expect to find, given that make-up of the population, 763 whites and 329 blacks.

Q. How many did you actually find?

A. We found 873 whites and 219 blacks. It was essentially 110 person difference.

Q. And so, your expected number of blacks was what number?

A. 329.

Q. And your actual number found?

A. 219.

Q. Now, in terms of percentage, what percent did--of whites would you have expected?

A. Would have expected 70% white.

Q. And what did you find?

A. 80%.

Q. And you would have expected what

percentage of blacks?

A. 30%.

Q. And what did you find?

179 A. 20%.

Q. Now, turning to the next column "Absolute Disparity," what does that mean?

A. Absolute Disparity is the simple difference between the percent expected and--the percent observed and the percent expected.

Q. Now, do you consider that in your work a useful indicator?

A. No, it's not in my opinion a useful indicator. It's certainly in many of the legal decisions, but it's not a helpful indicator to show the degree of over- or underrepresentation of a particular group.

A. Is there a more effective indicator in making that determination?

A. There is.

Q. And what's that called?

A. The Comparative Disparity.

Q. I believe that's your next column?

A. That's right.

Q. Would you indicate what the Comparative Disparity is and how it's arrived at?

A. The Comparative Disparity simply takes the absolute disparity and divides by the expected percent. Therefore, expresses the absolute disparity in terms of relative to the size of the population, and it tells relative chances of a member 180 of a particular group would have in being in a jury group.

So, in the example of the black, in Table 1, that minus 34% of the comparative disparity says that blacks in the Eastern District of North Carolina have--the average black has one-third less of a chance being a juror in the Eastern District of North Carolina than the

average white.

Q. And the average white?

A. Has 15% greater likelihood of being a juror than that person would have if the Juries reflected a cross-section.

Q. Now, the next column is called Pi Square. Would you tell the Court why that is there.?

A. Pi Square is a statistical bench mark used to calculate the probability of the observed difference or the differences found between the observed and the expected occurring by chance.

Q. So, I take it that if there was some other person checking your work would know the information with which you were working, is that correct?

A. That's correct.

Q. Now, I turn your attention to the columns marked "Probability and Odds" and ask if you would explain what those columns mean?

A. They're--first of all they're reciprocal. The odds are simply the flip
181 of the probability. You have--you have--
you divide the probability into one, you
get the odds.

Q. All right. When you say the odds are ten billion to one, ten billion to one as to what.

A. That says that the chances of finding the differences that we found between the observed and the expected, between the cross-section and the Jury Wheel, given the sample size that we pulled, the chances are ten billion to one, actually, greater than ten billion to one that that could have happened because of sampling variability, because of the normal fluctuations in sampling.

Q. All right, now, can it be expressed in terms of that's the probability that this could--you could get these results if, in fact, the wheel was a fair

cross-section?

A. That's another way of saying it.

Q. Now, I noticed that all of the odds here are ten billion to one. And yet other numbers seem to be different, can you explain that?

A. Yes, I calculated that using a program in a sophisticated hand calculator and it only displayed numbers up to ten digits.

Q. So basically ran off of a calculator?

A. That's correct.

The Court: Mr. Beskind, you're doing this for the court's benefit, I
182 assume, for me to rule on the motion.

Mr. Beskind: Yes, sir.

The Court: If you are, I suggest that you go into that a little deeper. I don't comprehend what he is talking about.

Mr. Beskind: I'm sorry, Your Honor.

I didn't hear you.

The Court: You may want to go into the ten billion to one odds a little more, if you're doing it for my benefit.

Mr. Beskind: I am doing it for your benefit, your Honor. I would be delighted.

By Mr. Beskind:

Q. Mr. O'Reilly, would you slowly go over the difference between probability and odds? And perhaps, you might want to use an analogy other than you used, other than statistician's language.

The Court: What odds are you talking about being ten billion to one?

The Witness: That if, in fact, the Master Jury Wheel was 30% black, 70% white, you know, the actual ten or twenty thousand names in that computer file, or however it's kept. If it actually was 30% black and one went in there and pulled a random sample of 1100 people out of that

Jury Wheel, the odds of finding in that sample is only 20% black are ten billion to one. I mean, it says the power of that 183 large of sample.

So, you know, if we took a sample of 300, in all likelihood, we would find that in our sample was roughly 20% black, 19, 21, 18, 22, ranging right around that. Yet our odds on that smaller sample might be ten thousand to one.

It refers to, you know, could you have gotten that difference because--you know, is there no real difference between the observed population and the master jury wheel, but the statistics we are showing are way off base because of sampling, the sampling area led to array. And this just says in that size sample it's extremely unlikely.

Q. Mr. O'Reilly, in terms of tossing a coin in heads or tails, could you explain what that means in terms of tossing a coin

ten times and having it come up heads eight times?

A. All right. That approach would--if you took a coin and tossed it, let's say 50 times and you found that you got heads 40 times, tails 10 times, you know, there's a possibility in normal flips that you are going to get an odd distribution like that, 40/10, even with an honest coin, even though it should be 25/25. But statistics can say in that example that the odds are--that that could have happened with an honest coin at say 10,000 to one. And so, that's this, with the sample of 1100.

The Court: The purpose of this is to show that the 1100 names that you drew in the sample is an accurate sample, isn't 184 that it?

A. That's right. That's right.

Mr. Beskind: Thank-you, Your Honor.

By Mr. Beskind:

Q. Do you have an opinion as to the extent in which blacks are under-represented on the present Eastern Jury--Eastern District Master Jury Wheel?

A. I do.

Q. And what is that opinion?

A. That they are very substantially underrepresented.

Q. By a factor of what?

A. By roughly a third.

Q. Now, turning to the next line and reading across on your table, would you explain to us how you draw the distinction between blue collar and white collar employment?

A. I categorize the occupations the jurors gave on their questionnaire form, 184 following strict census procedures on identifying, to categorize them into major occupational categories and then collapse them into what we understand to be white

collar and blue collar; clerical, managerial, professional making up white collar; operatives, laborers, craftsman, foreman making up blue collar.

Q. And did you use the same categories in making these decisions that the census bureau used in the census data?

185 A. Yes, I did. And I had to compare it with census information.

Q. All right. Without going through the data, do you have an opinion in which blue collar workers are underrepresented on the present Eastern District Master Jury Wheel.

A. I do.

Q. And what is it?

A. That they are very substantially underrepresented.

Q. And about or approximately what?

A. Roughly 50%. That is, there are about half as many blue collar workers as there would be if that Jury pool

represented the occupational structure of Eastern North Carolina.

Q. As to those with a high school diploma, is your next line, shows or less education, a high school diploma or less, do you have an opinion as to the extent in which the Eastern District Master Jury Wheel under represents those with a high school diploma or less?

A. I do.

Q. And what is that opinion?

A. That persons, less education persons, are substantially under-represented, to roughly to a degree of about a third. That is, that there is about a third fewer less than college educated in the jury wheel.

Q. And finally as to those people who are between the ages of 18 and 34, do you 186 have an opinion as to the extent to which that category of the population is under represented in the Master Jury Wheel of

the Eastern District of North Carolina.

A. I do.

Q. And what is that opinion?

A. That persons 18 to 34 years old are substantially underrepresented by roughly a third, again, or persons 18 to 34 years old in the jury wheel, than there would be if that wheel accurately represented the population.

Q. Now, do you have an opinion as to the cause of these people or groups being underrepresented?

A. I do.

Q. And what is that?

A. My opinion is that the sources used by the Court in creating the Jury Wheel. They have chosen sources that underrepresent these groups and they've gotten an unrepresentative Jury Wheel in Juries.

Q. What is the source that is used in the Eastern District of North Carolina?

A. Actual voters at the previous

presidential election. So, in this case, would be actual voters in the November 1976 election.

Q. Do you have an opinion as to what additional or replacement lists could be used that would make the Master Wheel more like a fair cross section of the
187 community?

A. I do.

Q. And what is that?

A. Well, things would improve, at least marginally, if the Court chose registered voters. Only roughly 40% of the eligible population actually vote. 60% registered and 60% of the registered voters, puts you down under 40%.

And but beyond registered voters, driver's license lists, particularly, and a merge system with drivers and voters, all the evidence shown gives much better representation of blacks, women and young people.

And presumably, though the data isn't there on education and occupation, that the effects would be similarly positive for the lower class.

Q. Do you have any reason to believe that the process, actual-- I'm sorry, a regular voter or registered voter and drivers (sic) were used would be any more complicated or any more expensive?

A. I'm pretty confident it would be simpler and less expensive than sending deputy court clerks out to individual jurisdictions to find out who voted. I mean, it's a very extra cumbersome way I think they've taken.

Q. All right. Turning your attention to what has been marked as defendant Hobby's Exhibit #2, would you tell the Court what that is, if you would.

A. This is a comparable analysis of a 188 group of persons who were picked as either forepersons or deputy foreperson for Grand

Juries in this district from 1974 to 1981.

Q. Looking at forepersons, only, not the combination of forepersons and deputies, that would be the second line down, would you tell the court at which the frequency with which women--I'm sorry--with which blacks served as forepersons on Grand Juries in the Eastern District between 1974 and 1981?

A. There were no black forepersons.

Q. And as to forepersons as to sex, would you tell the court the frequency at which women served as forepersons of a Grand Jury in the Eastern District of the United States between 1974 and 1981?

A. There were no women forepersons.

Q. Now, when you combine the job of foreperson and deputy forepersons, would you tell the Court the observed numbers with regard to race?

A. There were twenty-seven whites and

three blacks among the group of persons who were either foremen or deputy foremen.

Q. And what would you have expected using the census data?

A. Roughly 21 whites and 9 blacks. You would have expected about three times as many blacks.

Q. And that resulted in comparative 189 disparity in what percentage?

A. Minus 67%, or blacks were under-represented by two-thirds in these leadership roles in the Grand Jury system.

Q. And for just the foreperson as to race, what was the comparative disparity.

A. The comparative disparity was 100%. There were all--you know, it was just total exclusion.

Q. All right. Now, as to the sex as to the foreperson and the deputy foreperson, what did you observe in the

grand juries between 1974 and 1981 in the Eastern District?

A. There were 24 men and 6 women who served as either foreman or deputy foreman.

Q. And what would you have expected?

A. 15 of each.

Q. And the comparative disparity that that indicates?

A. That women are underrepresented by 60%, men overrepresented by 60%.

Q. What would be the comparative disparity for sex if you considered forepersons only?

A. 100%.

Q. I note that you don't have ten million to one over on the columns on the 190 right. Would you explain why that is?

A. Again that's because of the size sample here, and we're working with 30 people or 15 people, so that, if you had -- in the case of women, 15 chances to

choose--15 forepersons were drawn. So, there could have been any distribution of men and women. The likely distribution in a sex neutral process would be that there would be roughly half and half. The fact that it was 15 to zero, the statistics indicate that it could happen by chance, it would have happened only less than one time in 10,000.

Q. All right. Now, Mr. O'Reilly, in your profession as a statistician, what is the accepted odds at which these things are considered statistically significant?

A. 20 to one.

Q. And anything better than that is something on which a statistician can rely?

A. That any lower odds than 20 to 1, a statistician would say, well, we can't conclude that there's no difference, there's some conceivable chance that our differences found were the result of

sampling variations.

Q. But we're talking now about 20 to one or greater?

A. That's right.

Q. Because that's all that is here.

A. That's right.

Then the conclusion is, there's a real
191 difference and that we're not being led in
the wrong conclusions because we used the
sample.

Mr. Beskind: Your Honor, at this
time, the defendant Hobby offers into
evidences Exhibits #1 and #2.

The Court: Let them be examined.

CROSS EXAMINATION
9:59 A.M.

By Mr. Blackburn:

Q. Mr. O'Reilly, in making up your
charts, here, at what point, if any, did
you take into consideration the precise
manner in which the Eastern District of

North Carolina compiles its jury pool and specifically I'm asking the question within the divisions of the Eastern District?

A. I just need more specifics on the question. I don't know what you mean.

Q. In other words, do you know, sir, how the Eastern District decides to call, say 75 grand jurors for a Grand Jury session?

A. That I don't recall being investigated specifically, no.

Q. Do you know, sir, whether or not there are geographical divisions, represented within the Eastern District?

A. I do, sir.

Q. Do you know, sir, whether or not
192 your study took into account, for example, the Elizabeth City division or the Wilmington division or the New Bern division or the Fayetteville division?

A. Are we talking about the Master

Wheel analysis?

Q. No, sir, I'm talking--

A. --or the forepersons?

Q --Just with respect to whether or not your study ever considered how the grand jurors were actually summoned to a Grand Jury session.

A. No.

Q. Well, now, do you know, sir, how the Eastern District Court system actually summons people from, say, Wilmington to serve on a grand jury in Raleigh?

A. No, note (sic) I've heard--I don't know that professionally and I haven't studied that in detail. I just have extraneous information that I've heard.

Q. And I take it that would be your answer with respect to other divisions as well?

A. In terms as to how individuals are called for Grand Jury service, yes.

Q. Now, your study used the 1970

census, and I believe that in a response to a question from Mr. Beskind you said that you only used the 1980 census you were only able to compare racial make-ups, is that correct?

193 A. That's correct.

Q. Now, with respect, then to the 1976 election, which is the basis on which the Grand Jury which indicted Mr. Hobby was formed, do you know, sir, or do you have an opinion as to the relationship of the people who were in the Jury Wheel as a result of the 1976 election and of the actual population in 1976, the actual make-up of blue collar workers in 1976?

A. It's my conclusion that I do based on the 1970 census, yes.

Q. But based on any-- that material, of course, is six years by 1976?

A. That's correct.

Q. And you would agree, of course, that people are mobile in today's society,

is that true?

A. That's correct.

Q. So, is it correct for me to say-- strike that please.

Q. Do you have an opinion, sir-- well, strike that, too.

Q. Your opinion that it is the same is based on factual data that is six years old by 1976, is that correct?

A. My opinion that the 1970 data for occupation, education and age is the best data available to make a '76' comparison and in all likelihood, it's highly accurate.

194 And thirdly, that if there's any error, I have no way of knowing if the error would magnify the apparent under-representation, rather than diminish. In all those respects, I feel the '70' census is valid, useful, and there's no better data.

Q. I'm not quarreling with that. All

that I'm saying is, isn't it really a guess, though, that the make-up of the Jury Wheel of blue collar workers in 1976 is disproportionate to the population of blue collar workers in the Eastern District in 1976. Do you know--

A. No, it's not. In no conceivable way could I call that a guess. The actual proportion of white collar and blue collar in '76' could vary from what the census said in '70', but there's just no conceivable way, unless--that knowing what we do know about population change and the way it changes that the difference between '70' and '76' could be enough to at all change the conclusion that blue collar workers are very substantially under-represented. It could be less than we say, and it could be more.

Q. Have you conducted any studies with respect to the changes of our blue collar workers in the Eastern District between

'70' and '76'?

A. No, I have not.

Q. All right. With respect to the education category and the age category as well, I take it then that your analysis is 195 also based on information that is six years old by 1976, is that correct?

A. That's correct.

Q. With respect to foreman and deputy foreman, did you take into account that the position of sergeant of arms of the Grand Jury.?

A. I did not.

Q. Do you know, sir, what a foreman of a Grand Jury does?

A. I've heard.

Q. Do you know of your own personal knowledge? Have you ever served on a Grand Jury?

A. No, I have not.

Q. Do you know what a deputy foreman does?

A. What I know about it is hearing about a dozen Federal Judges in the Northern District of Georgia explain how it's done.

Q. Have you been present when a Grand Jury was selected?

A. No.

Q. Have you ever heard a District Court Judge instruct a Grand Jury on the responsibilities of a foreman or a deputy foreman or a sergeant at arms?

A. No, I have not.

Q. Do you know, sir, how many votes 196 each member of a grand jury gets?

A. I do.

Q. How many?

A. One each.

Q. Does a foreman or a deputy foreman get more votes than another grand juror?

A. No, I'm sure not.

Q. Now, you stated that it was your opinion that if you added people with

driver's license and also, what else?

A. Registered voters.

Q. People with driver's licenses and actual voters--registered voters--

A. Correct.

Q. --that you would get a greater cross section, is that correct?

A. Correct.

A. Is there anything in the North Carolina Plan, anything at all, which systematically excludes anybody from being placed in a Grand Jury Wheel, once that person has reached the age of 18 years?

A. I would say, yes. I mean, it's an argument on what systematically. I would say, given the history of North Carolina, the fact that most of the counties are under the Voter Rights Act and earn their participation in that program, the way history continues and works through that, 197 and ample social science and other studies

showing the characteristics of registered voters, the characteristics of actual voters, choosing-- if one knew that, and still chose actual voters, I would say, you know, that you'd have a very strong idea of what kind of result you're going to get. I'm not saying anybody did when they made that choice. But I'm saying that that's in one sense how systematic it is.

Q. Did you vote in 1976?

A. I did.

Q. Did anybody keep you from voting?

Mr. Beskind: Objection to Relevancy, Your Honor.

The Court: Overruled.

By Mr. Blackburn:

Q. Do you know anyone in Eastern North Carolina, right now that was systematically kept from voting in 1976? Anybody at all?

A. I've made no study of it.

Q. That's not the question.

A. I don't know. No, I don't know.

Q. Do you know how many blacks voted in 1976, with respect to the number of blacks in Eastern North Carolina?

A. Yes.

Q. How many?

A. These figure suggested about 20% of 198 the eligible blacks voted.

Q. Um hum.

A. These are samples-- The sample Jury Wheels are samples of the actual voter population. So, that's information on that.

Mr. Blackburn: Can I have just a moment, your Honor?

The Court: Yes. And while you are thinking, I'm going to ask a couple of questions myself.

EXAMINATION 10:09

By the Court:

Q. Mr. O'Reilly, the study and figure that you have accumulated and are testifying from today, do they differ in any respect, at all, from the figures that you gave in the Coates Trial?

A. The foreperson information is entirely new. The underlying data and the essential results of the studies of the Master Wheel are identical.

Q. You've conducted no additional study since that time, you've just interpolated additionally with regard to forepersons and deputy forepersons?

A. Yes, but the only other element that would be new is that it's a comparison of the 1980 information for the racial make-up. It validates the earlier number study of the population--certain 199 population.

Q. That doesn't change in any way--

A. No.

Q. It just confirms your feeling that

the figures were valid in 1976, just as they would have been in 1970, when they were taken?

A. Sure.

Q. Can you tell me, you have said that blacks, in your opinion, were underrepresented by approximately 30%. Can you give me a figure that you feel would be they would be underrepresented by use of voter registration, as opposed to voter participation?

A. It's a raw thing, but in general, looking at studies I've done in other North Carolina counties, approximately 16 or 18, the average black underrepresentation runs around 20%. Some I've worked on, 70, one time, or 50. But I would say 20 to 25%, rather than roughly 35% here.

So, that apparently would be a rough figure, going simply to registered voters.

Q. Can you tell me what these figures show as to the representation of blue collar workers, high school graduates and young people and how the use of voter registration as opposed to voter participation, what the figures would be?

A. I don't have figures on that. But my census gives me some other information. That it would enhance their representation. I don't think it would
200 wipe out the problem. You'd have to go to lists beyond the voter list to make really serious representation.

The Court: Any further questions?

Mr. Blackburn: Yes, sir.

Thank-you.

CROSS EXAMINATION
10:12 A.M.
(Resumed)

By Mr. Blackburn:

Q. Mr. O'Reilly, did you make any study, or obtain any information, for

example, as to how many blacks, blue collar workers, college or high school graduates, for the different age groups were on the actual Grand Jury that returned the indictment of Mr. Hobby?

A. No, I did not do that.

Q. You have, then, no opinion as to whether or not the membership of the Grand Jury that returned the indictment against Mr. Hobby and Mr. Levi and Hughes were in any way disproportionately represented, is that correct?

A. I didn't look at that because it's my understanding the law against statistics, essentially, is that you can't judge, basically, based on one Grand Jury. Now, this is not because you can't come to a conclusion about a matter. You don't look at it. As I say, you don't presume ill, but you don't presume good.

201 Q. Well, fair enough, but is the answer to the question, though, you really

did not make any study, then, of the grand jury make-up to determine that?

A. That's correct.

Q. And is it true, also that you have not made any study of any of the specific Grand Juries, themselves, not the Master Wheel, but the actual Grand Juries, of any that were in the Eastern District, say, since 1976?

A. No. Specifically, the Master Jury Wheel from which they are drawn is contaminated, if you draw randomly from that, you're going to get contaminated product.

Q. That is your opinion?

A. That's a simple fact of statistics.

Q. I understand that. That's your opinion.

The Court: Okay. Let me ask one last question, Your Honor.

By Mr. Blackburn:

Q. Strike that. That's all the questions.

The Court: Mr. Manning, do you desire to ask any questions?

Mr. Manning: No, your Honor.

202 The Court: Mr. Morgan?

Mr. Morgan: No, your Honor.

Mr. Beskind: Redirect, your Honor.

The Court: Proceed.

R E D I R E C T E X A M I N A T I O N
10:14 A.M.

By Mr. Beskind:

Q. Mr. O'Reilly, assuming that when the Eastern District Clerk draws a Grand Jury, draws 75 potential grand jurors, that those grand jurors are drawn in proportion to the population in each of the divisions in which they are drawn, would that make any difference as to any opinion that you have given here today?

A. Would you repeat the question?

Q. Sure. Assuming that when the clerk draws 75 names of potential grand jurors from which a Grand Jury like Mr. Hobby's will be drawn, that when he draws those 75 names he uses a mathematical formula to ensure that the grand jurors, the 75 drawn represent the proportional distribution of the population within the divisions of the Eastern District, would that make any difference as to the opinions that you have given here today?

A. No it wouldn't

Q. Secondly, when you used the 1970 data for your study here, did you make any
203 adjustments in that data in order to make it more accurate, considering the fact that it was being used in 1976?

A. The only adjustment made, the only adjustment possible, was to get at the 18 and older black/white population '76', I used the 12 year old and older in 1970. That is simply what we call aging the

population. And that's the only adjustment made.

The other element is, I didn't use the total population, I used the household population. That is, that household excludes persons living in Army Barracks, prisons, other institutional arrangements, who presumably are less likely to be eligible to vote and therefore to be eligible for jury service.

Q. So, rather than using '70' data for age and related things, for 18 year olds and above, you used it for 12 year olds and above, which would give you those people who would be 18 in 1976?

A. Right.

Q. Would you indicate what, with regard to the study of forepersons, is new, that is new in your testimony today?

A. The entire study, in the sense that there was no information that was gathered or analyzed about the composition of the

forepersons or deputy forepersons.

Q. Had none of that information been
204 presented in the Coates case?

A. That's right.

Mr. Beskind: Thank-you. No further
questions, Your Honor.

The Court: You may stand down.
Call your next witness.

(Witness excused).

The Court: Call your next witness.

Mr. Beskind: Your Honor, we have
no further witnesses.

Mr. Beskind: Your Honor, I must ask that you take judicial notice of the Jury Plan for this District as part of the record, and also, I believe that Mr. Blackburn is willing to stipulate that the forepersons are selected by the Judges who impanel the Grand Juries. And I would like to have that stipulation on the record as well.

The Court: Let the record so reflect.

The real question in the motions that are presented have to do with Sections 1861 or 1862 of Title 28 of the United States code.

1861 provides that all litigants are entitled to Trial by Jury and the right to have their Grand Jury selected by a fair cross-section of the community in the District or Division wherein Court is convened.

Section 1962 provides that no

citizen shall be excluded from service as a grand or petit juror in the District Courts of the United States on account of race, color, race, religion, sex, national origin, or economic status.

Now, the Fourth Circuit Court of Appeals, in the case referred to, United States of America v. Gilliam Wayne Coates, in an opinion by Circuit Judge Donald Russell, as acting on the very testimony you're relying on in this case, counsel, with the absence of the testimony concerning forepersons, and the possibility of blue collar versus white 212 collar workers.

But Judge Russell pointed out in his decision as defendant's own figures demonstrate the use of voter registration lists, rather than actual voter list would increase the source by percentages indicated. Yet both types of lists are expressly approved by the Act.

Now, of course, that's still true today. Title 28, Section 1863 specifically provides that voter registration, actual voter list and/or voter registration lists utilized by this district, is a matter of public record that since this case has arisen--well, maybe it was before the case arose, but the court is now in the process of putting together a new Jury Wheel, adopted under the same procedures, and using the same voter lists as before. In fact, the Raleigh Division is approximately completed now.

That plan has been approved by the Circuit Counsel of the Fourth Circuit by Statute as it must be. The provisions in the United States Code have not been changed or amended during this long period of time, and the court, based on the Coates Decision feels that the Defendants failed to prove any violation of the

quoted Section of the Statute.

Therefore, the Motions are denied.

Mr. Beskind: Your Honor, may we assume that your Ruling applies to forepersons as well as to the other challenge?

The Court: Yes, indeed. If I did not make it clear, I do now. The basis of the Motion was comprehensive, if you intended to do that. But my Ruling this morning is comprehensive.

The court does not feel that the addition of this element makes any difference in the Plan that has been entered into by this District, and the decision as entered by Judge Russell in the Fourth Circuit Court of Appeals.

Mr. Beskind: Thank-you, Your

214 Honor.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 81-5-CR-5

No. 81-6-CR-5

UNITED STATES OF AMERICA)

v.)

WILBUR HOBBY, et al.)

MEMORANDUM

In accordance with the 1 July 1981 hearing in Raleigh, North Carolina, the following Motions were ruled upon by the Court:

1. Defendants' Motion to Dismiss the Indictments Due to Improper Selection of Grand Jurors -This Motion was denied by the Court.

2. Defendants' Motion to Dismiss the Indictments Due to Selective Prosecution -This Motion was denied by the Court.

3. Defendants' Motion to Suppress Evidence and Return Property was heard by the Court and taken under advisement.

4. The Motion of the United States to Quash Subpoenas for Testimony and Production of Documentary Evidence was determined by both parties to be moot.

This 10 July 1981.

W. EARL BRITT
United States District Judge

GUILTY BY A JURY, AND A DETERANCE TO
OTHERS.

All right, Mr. Hobby, if you will stand, please.

Madam Clerk, as to Count I of the Bill of Indictment, it is adjudged that the Defendant is hereby committed to the custody of the Attorney General of the United States or his authorized representative, for imprisonment for a term of 18 months.

As to Count II--Count III--strike that. Continuing with Count I. And that he pay a fine in the amount of \$10,000.00.

Now, let me say at this point, Counsel for Defendant Hobby, that the court is going to impose the maximum fine on each count of this indictment. I remind you of the provisions of Rule 35, rules of criminal procedure, which for the benefit of the rest of you is a provision

whereby a sentence may be modified by the court. The reason the court is imposing the maximum fine is I have absolutely insufficient information on which to base a fine that the defendant could pay, or I have nothing to indicate that he could not pay that. If you can show me through proper financial statements something about the financial condition of the defendant, which should have been before me today, I will take that into consideration.

As to Count III of the Bill of Indictment, it is the judgment of the
796 Court that the Defendant is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a term of two years. The execution of this sentence is hereby suspended and defendant is placed on probation for a period of five years. Such period of

probation shall be consecutive to the sentence imposed on Count I. Let that read, Madam Clerk, to the confinement portion of the sentence served on Count I, and is to be on the following terms and conditions: The Defendant is to remain of good behavior and is to provide community service not less than eight hours per week in some program approved by his probation officer, and that he pay a fine in the amount of \$10,000.00.

Count IV of the Bill of Indictment. The Defendant is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a term of two years. The execution of this sentence is hereby suspended and Defendant is placed on probation for a period of five years. This sentence is to run concurrently with the sentence imposed in Count III, and is to have the same terms

and conditions. Defendant is to pay a fine in the amount of \$10,000.00 on Count IV.

1797

On Count V of the Bill of the Indictment, Defendant is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a term of two years. Execution of this sentence is hereby suspended and Defendant is placed on probation for a period of five years under the same terms and conditions as set forth for Counts III and IV, this sentence to run concurrently with that imposed in Counts III and IV and pay a fine in the amount of \$10,000.00.

It is the Court's recommendation that the Defendant be imprisoned at the Lexington, Kentucky facility where his medical needs can be met and attended to, and if the Defendant desires, that he be allowed to report under the directions of

the United States Marshal Service and the Bureau of Prisons at a time to be designated at his own expense. Does he desire that provision?

Mr. Beskind: Your Honor, we would like that provision. We would also at an appropriate time like to take up the matter of a Bond for Appeal.

The Court: Yes, I will get into that, but, and I realize that this may be quite some time.

Mr. Beskind: We would like to avail ourselves to that provision, Your Honor.

The Court: Mr. Hobby, this sentence means that I am giving you what is known as a split sentence. I am giving you 18 months active and Madam Clerk, I want the record to reflect that it is the Court's intention and feeling that the Defendant
1798 should serve between 6 and 12 months of that sentence. Now, the reason that I am putting that in there is that the parole

guidelines provide that you must serve your minimum--a minimum of a third, but there is no way under any interpretation that I have available to me for me to be any more definitive than that. So I will put it in there for what it is worth. I hope the prison people and the Board of Paroles will take that into consideration, and that what this additionally means is that after you serve whatever time that is on that sentence, you will be on probation for a period of five years. I will advise you now that you have a Right of Appeal. The entry of it may be made within ten days after this Judgment. If you do not, cannot afford an attorney to perfect your Appeal, one will be appointed for you.

You may be seated.

Mr. Levi, stand please.

Madam Clerk, that all hands have been raised.

Mr. Sharp, as foreman of the Jury, you have reported the case of United States of America versus Wilbur Hobby as follows:

We the Jury find the Defendant Wilbur Hobby guilty as to Count I and guilty as to Count II--that's Count III, correction--guilty as to Count IV and guilty as to Count V; is that the Verdict of the Jury?

Foreman: It is.

The Court: Members of the Jury, so many of you as agree that your foreman has correctly reported your Verdict, please indicate by raising your right hand.

(All hands raised.)

The Court: Members of the Jury,
1795 quite obviously, this completes your task.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 82-5143

United States
of America,

Appellee,

versus

Wilbur Hobby,

Appellant.

No. 82-5144

United States
of America,

Appellee,

versus

Mort Levi,

Appellant.

O R D E R

Upon consideration of the petition for rehearing, no request for a poll of the court being made on the suggestion for

rehearing en banc, and with the
concurrence of Judge Hall and Judge
Phillips,

IT IS ORDERED that the petition for
rehearing be, and it hereby is, denied.

Clement F. Haynsworth, Jr.
United States Circuit Judge

Supreme Court of the United States

No. 82-2140

Wilbur Hobby,

Petitioner,

v.

United States

ORDER ALLOWING CERTIORARI.

Filed December 12, 1983 .

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted, limited to Question 3 presented by the petition.

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